

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
*Norfolk Division***

MACEO SPATES, #1199722,

Petitioner,

v.

Action No. 2:11cv284

**HAROLD CLARKE,
Director, Virginia Department of Corrections,**

Respondent.

RESPONDENT'S RULE 5 ANSWER AND MOTION TO DISMISS

The respondent, by counsel, pursuant to Rule 5, Rules Governing Section 2254 Cases, moves the Court to dismiss Maceo Spates' petition for a writ of habeas corpus.

1. The reasons requiring dismissal are set forth in the accompanying memorandum of law that is incorporated by reference.
2. Each and every allegation not expressly admitted should be taken as denied.
3. The lack of merit of the petition is ascertainable from the record and the applicable law without the need of an evidentiary hearing. See 28 U.S.C. § 2254(d) and (e).
4. The respondent has requested the transfer of the records from the trial court proceedings, including the trial transcript, the appellate proceedings, including the records from the Court of Appeals of Virginia and the Virginia Supreme Court, and the records in the petitioner's state habeas proceedings.

WHEREFORE, the respondent prays that the petition for a writ of habeas corpus be denied and dismissed without an evidentiary hearing.

Respectfully submitted,

HAROLD CLARKE,
Director, Virginia Department
of Corrections,

Respondent herein

/s/

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CERTIFICATE OF SERVICE

I certify that on October 4, 2011, I electronically filed the foregoing Rule 5 Answer and Motion to Dismiss with the Clerk of the Court using the CM/ECF system; and I certify that I have mailed the document and a copy of the Notice of Electronic Filing (NEF) by United States Postal Service to the following CM/ECF non-participant: Maceo Spates, #1199722, Sussex II State Prison, 24427 Musselwhite Drive, Waverly, Virginia 23891, Petitioner.

/s/
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